

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION**

EDWARD PALMORE,

Plaintiff,

v.

CIVIL ACTION NO.: CV514-089

GRADY PERRY, Warden; FNU  
HUTCHINSON; and FNU HARLAN,

Defendants.

**ORDER**

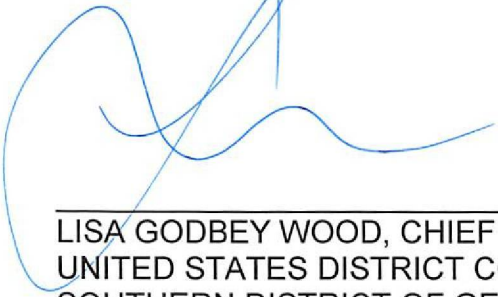
After an independent and *de novo* review of the entire record, the undersigned concurs, in part, with the Magistrate Judge's Report and Recommendation, to which Plaintiff filed Objections. In his Objections, Plaintiff asserts that one of the cases the Magistrate Judge counted as a "strike" under 28 U.S.C. § 1915(g), Palmore v. Tucker, CV510-40, is still pending on appeal with the Eleventh Circuit Court of Appeals. Plaintiff asserts that the Eleventh Circuit has found his appeal to be not frivolous and ostensibly asserts that this case should not count as a strike. Plaintiff's assertions overlook the plain language of section 1915(g): that a previous action or appeal dismissed on the grounds that it was frivolous, malicious, or failed to state a claim constitutes a "strike". In this Court, Case No. CV510-40 was dismissed on grounds falling under § 1915(g)'s umbrella and counts as a "strike".

Plaintiff contends that the Magistrate Judge's use of the word "dishonesty" to describe Plaintiff's actions is "a rather harsh assessment." (Doc. No. 12, p. 2). Plaintiff

alleges that, when he filed his complaint in CV510-40 and used the form complaint, he did not disclose previously-filed causes of action. Plaintiff asserts that there was no finding of dishonesty then by this Court, and this Court should make the same finding now. Plaintiff was dishonest in his answers to the inquiries included on the form complaint in this case, as he failed to answer the questions fully and truthfully under penalty of perjury. Simply because this Court did not sanction Plaintiff for his dishonesty on a previous occasion does not mean that the same course will be followed in this case. However, the portion of the Magistrate Judge's Report recommending the dismissal of Plaintiff's Complaint with prejudice is rejected, as the undersigned does not find that Plaintiff's omissions in his complaint form warrant such a severe sanction.

Plaintiff's Objections are **overruled**. The Magistrate Judge's Report and Recommendation, as amended herein, is adopted as the opinion of the Court. Plaintiff's Complaint is **DISMISSED**, without prejudice, pursuant to 28 U.S.C. § 1915(g). Should Plaintiff wish to pursue this cause of action, he may do so by submitting another complaint along with the full filing fee. The Clerk of Court is directed to enter the appropriate judgment of dismissal.

SO ORDERED, this 3 day of February, 2015.



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LISA GODBEY WOOD, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA